

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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DEC 27 2018

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Thomas L. Hughston, Jr., Circuit Court Judge

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Circuit Court Case No. 2009-CP-10-3010  
Appellate Case No. 2018-000566

Betty Fisher and Lisa Fisher..... Appellants

v.

Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd ..... Respondents

In the Matter of the Estate of Alice Shaw-Baker.

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**RESPONDENTS' PETITION FOR REHEARING**

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*ATTORNEYS FOR RESPONDENTS*

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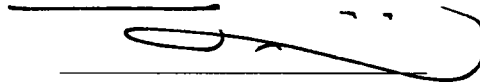
Pursuant to Rule 221(a), SCACR, Respondents hereby petitions the Court for a rehearing in the above-captioned appeal stating particularly the following points Respondents believe the Court overlooked or misapprehended:

- 1) As to the Court's reversal of sanctions against Betty and Lisa Fisher, Respondents believe the Court misapprehended the practical, equitable, and economic effect such reversal has on the Respondents, who were the prevailing parties, and overlooked the inconsistency of its reversal with statutory and common law.

For the above reasons, and those more thoroughly discussed in the accompanying Memorandum in Support of Petition for Rehearing, Respondents respectfully request this Court grant a rehearing of the above-captioned appeal with regard to the points indicated herein, and reconsider its reversal of the circuit court's award of sanctions.

Respectfully submitted,

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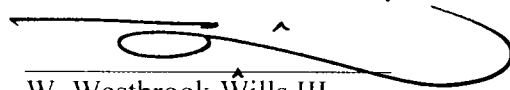
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**PROOF OF SERVICE**

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I certify that I have served the enclosed Respondents' Petition for Rehearing by depositing a copy in the United States Mail, postage prepaid, on September 18, 2018, addressed to Lisa Fisher and Betty Fisher at P.O. Box 91112 Long Beach, California 90809-1112, and by e-mailing a copy to her.

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**RESPONDENTS' MEMORANDUM IN  
SUPPORT OF PETITION FOR REHEARING**

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*ATTORNEYS FOR RESPONDENTS*

Pursuant to Rule 240, SCACR, Respondents hereby their Memorandum in Support of Petition for Rehearing, showing this Court as follows:

Having had a “front row” apercu to Appellants and their counsel’s conduct over the course of this more than 10-year litigation, and after an exhaustive review of the pleadings, discovery, accountings, and other critical documents, Judge Hughston found by a standard of clear and convincing evidence Appellants’ claims were entirely frivolous, and their acts alone served to delay the case over an inordinate number of years. (R. 67-70, 111-12, 123-4, 132-3). Judge Hughston found that Appellants or Lisa Fisher improperly spent or wasted amounts totaling \$78,596.02 of Estate money after Lisa Fisher was discharged as conservator, and with no authorization. (R. 133-4), ordered that those monies be restored to the Estate as part of his sanction award (R. 134-5). Judge Hughston also considered factors regarding the case and the parties, and counsel for Respondents’ attorneys’ fees affidavits, determined Respondents were entitled to an award of those fees under both the South Carolina Frivolous proceedings Sanctions Act and under Rule 11, SCRPC. (R. 67)

This Court has reviewed evidence in the record for itself, and has revered the trial court’s sanctions award against Betty Fisher, finding “she was not in charge of the actions and merely went along with what her daughter – Lisa Fisher, and attorney in California – advised her.” The Court also reduced the amount Lisa Fisher was required to pay back to the Estate monies Judge Hughston found she improperly spent or wasted from \$78,596.02 to \$16,680.28, finding the trial court’s order contained addition and subtraction and other mathematical errors, double counting of certain portions of the award, and a lack of evidence as to other portions of the award.

(Memorandum opinion No. 2018-MO-039, para. 4). Finally, the Court reversed Judge Hughston's award to Respondents of their attorneys' fees without stating a reason why. (Id.).

The Court's reversal of Judge Hughston's sanctions award, particularly including his award of attorney's fees, is inconsistent with the law, unfair, and needs to be corrected.

- A. Because the trial court, and this Court both specifically found that Appellant Lisa Fisher's claims were frivolous, and that she engaged in abusive litigation tactics that amounted to sanctionable conduct, it must uphold the award to Respondents of their reasonable attorney's fee.**

Under the Frivolous Civil Proceedings Sanctions Act, S. C. Code Ann. § 15-36-10 ("FCPSA") an attorney, party, or pro se litigant **shall be sanctioned** for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with any one of the conditions specified in the statute. The trial court found both Appellants and their attorney's conduct met the requirements for an award under the FCPSA. (R. 67-70). This Court reversed that award entirely against former counsel for the Appellants, and against Betty Fisher, even though those two were instrumental, willing, and complicit parties with regard to instigating and continuing this and ancillary actions and appeals. While this Court only reduced the sanction against Lisa Fisher, it eliminated from the award of attorneys' fees from the sanction all together.

One of the primary purposes of the FCPSA, as reflected in its statutory remedy, is to hold responsible those litigants or their attorneys, or both, who have engaged in frivolous and dilatory litigation for the costs incurred by opposing parties as a result of their conduct. Undoubtedly, in adopting the FCPSA, the South Carolina Legislature was mindful of the tremendous potential economic impact frivolous claims and litigation may have on opposing parties in the form of unnecessary attorney's fees and costs when it enacted the FCPSA. Indeed, one of the limited sanctions provided for under the statute is an award of reasonable attorneys' fees..

The trial court found Appellants and their attorney were sanctionable under both Rule 11 and the FCPSA (R. 67). This Court affirmed the trial courts finding with regard to Lisa Fisher, but it reversed Judge Hughston's award of attorney's fees against both Appellants and Appellants' attorney. Respondents submit that this Court's reversal of the sanctions award, and particularly that portion of the sanctions award representing Respondents' attorney's fees, is against the very intention of the FCPSA and the Legislature in enacting the statute to compensate those affected by frivolous litigation, and to deter it in the future. At the very least, this Court's reversal of the award of attorneys' fees against Lisa Fisher is improper, and unfair, as both the trial court and this Court expressly found her conduct frivolous, abusive, an sanctionable. Of course, a trial court's ruling on sanctions will not be disturbed absent a clear abuse of discretion; an abuse of discretion may be found where the trial judge's conclusion had no reasonable factual support, resulted in prejudice to the right of appellant, and therefore amounted to an error of law. See Culbertson v. Clemens, 322 S.C. 20, 471 S.E.2d 163 (1996). Here, this Court agrees with the factual conclusions of the trial court, and therefore, disturbing his award of sanctions, particularly the attorneys' fees, is inconsistent with the statute, and it's purpose.

For the same reasons, the trial court's award of sanctions against Appellants, and particularly Lisa Fisher, was appropriate under Rule 11.

**B. In addition to sanctions under the FCPSA and Rule 11, Respondents requested, and are entitled to fees under the Probate Code.**

Irrespective of the FCPSA and Rule 11, Respondents requested, and are entitled to fees under Section S.C. Code Ann, § 62-1-111, which provides that in a formal proceeding, the Court "as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of

the controversy. Judge Hughston specifically found that justice and equity required Appellants to pay Respondents' attorneys fees. (R. 127). Equity requires that Appellants, and at the very least, Lisa Fisher, be responsible for Respondents' attorneys fees under this code section too, as an additional sustaining ground for the trial court's award.

**C. This Courts' reversal of the sanctions award, and particularly the trial court's award of attorneys' fees works is punitive to Respondents.**

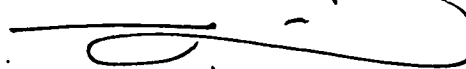
This Court's reversal of the sanctions award, and most particularly the award of Respondents' attorneys fee wrecks on the innocent beneficiaries the cost of 10-years of defending against Appellants' decidedly frivolous and vexations claims, and results in costs to them they cannot afford at the end of the day. This Court's reversal of the attorney's fee award is punitive, in its effect, against those who were unwillingly and unnecessarily caused to endure this lengthy litigation, when Appellants' were found by both courts to have acted frivolously in bringing their claims, and Respondents prevailed at every single stage of the litigations and appeals.

It is certainly unjust that the Respondents are now left to pay for the significant attorneys fees Appellants conduct caused them to incur. Indeed, the result will be that Respondents will receive precious little of the inheritance they have been counting on and are now entitled to over the course of these last 10 plus years. Unfortunately, one of the intended beneficiaries, Sandra Byrd, passed away before even having a chance to enjoy the benefit of the inheritance designated to her. Such a result is most certainly not consistent with the last intention of Alice Shaw-Baker, nor with the South Carolina Legislature in specifically providing a remedy for frivolous litigation that results in such inequitable and unjust outcomes as we have here. Indeed, if we do not enforce the statute, we effectively have no laws against frivolous litigation in this State.

Respondents respectfully request this Court allow for rehearing of its reversal of the trial courts sanctions against both Appellants' and their attorney, and reconsider and reinstate the trial courts sanctions award, and particularly its award of Respondents' attorneys' fees.

Respectfully submitted,

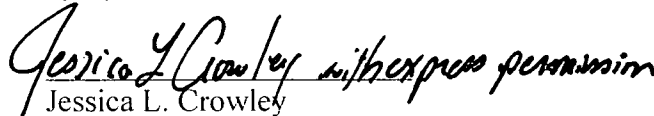
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Ex parte:  
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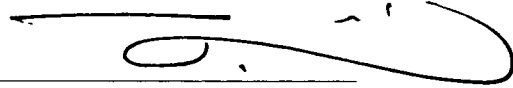
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[Signature on following page]

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